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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/15/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,039

Applicant(s)

MITCHELL ET AL.

Examiner

Fenn Mathew

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The declaration under 37 CFR 1.132 filed 5/5/2003 is sufficient to overcome the rejection of claims 1 and 24 based upon 35 U.S.C. 102(b).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over 'PA1 (Time Machines by Nautilus pgs. A-22) in view of Habing et al. (U.S. Patent No. 5,897,467). Referring to claim 1, 'PA1 discloses an exercise machine comprising a frame, a seat mounted to the frame, a pair of support pads mounted to the frame being positioned to engage one of the upper arms and elbows of a seated user, and being movable between an extended position in which the user's arms are substantially straight, and a curled position in which the user's arms are bent, and a resistance system connected with the movement arm units that provides resistance. 'PA1 discloses the claimed invention except for the specific angles at which the pivot axes meet. Habing teaches an analogous device including a pair of support pads mounted to a frame and movement resistance arm units with the axes of rotation outwardly canted

Art Unit: 3764

at an angle approximately within the claimed range of the applicant. It would have been obvious to one with ordinary skill in the art at the time of invention to have the movement arm units have axes of rotation that met at an angle as taught by Habing in order to allow for isolation of different portions of the bicep muscle during exercise while minimizing awkward movement.

4. Referring to claim 2, 'PA1 as modified above by Habing, shows that the height of the seat can be adjusted. (Holes on vertical member underneath seat suggest adjustability).

5. Referring to claim 3, 'PA1 as modified above by Habing, shows the support pads angled such that a seated user's upper arms would be angled upwardly from the shoulder to the elbow.

6. Referring to claim 4, 'PA1 as modified above by Habing shows the arms angled upwardly from shoulder to elbow at an angle of more than 5 degrees.

7. Referring to claim 5, 'PA1, as modified above by Habing, discloses an exercise machine inherently having a backrest (preventing user from falling backwards). The specific angle at which the backrest lies with respect to the underlying surface is unclear from the pictures. However, the specific angle chosen would be a matter of obvious design choice to the skilled artisan at the time of invention, as a variety of angles could be chosen based on user comfort and it is well known and common in the art to have exercise devices with backrests that lie at a 90 degree angle with respect to the underlying surface.

Art Unit: 3764

8. Referring to claim 6, the modified 'PA1 device shows the support pads positioned so that each of the user's elbows is located on a respective axis of rotation.
9. Referring to claim 7, the modified 'PA1 discloses the claimed invention except for the specific angle formed by the axes of rotation. The specific angle, or range of angles would be a matter of obvious design choice within the knowledge of one with ordinary skill in the art, since the skilled artisan would choose a range of angles depending on the specific areas of the bicep that were to be exercised.
10. Referring to claim 8-9, 'PA1 as modified above discloses the claimed invention except for the frame structure. Habing teaches an analogous device wherein the frame structure includes pairs of front and rear uprights, with each set of front and rear uprights defining a vertical plane, wherein the vertical planes form an angle with respect to one another approximately between 20 and 70 degrees (as best understood by examiner). The feature of having front and rear uprights offset from one another thereby defining vertical planes that intersect each other is old and well known in the art, and the specific angles used are a matter of design choice. Therefore, it would have been obvious to the skilled artisan at the time of invention to further modify the 'PA1 device by providing a frame with offset uprights defining vertical planes as taught by Habing in order to further support the movement arms at their angled formation.
11. Referring to claim 10, the modified 'PA1 device shows the resistance system comprising a weight stack.

Art Unit: 3764

12. Referring to claim 11, 'PA1 as modified by Habin in claims 8-9 disclose the movement arm unit comprising a cam wherein the resistance system includes a belt attached to and engaging each cam. (See a-22).

13. Referring to claim 12, the modified 'PA1 device shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit.

14. Referring to claims 13-14, 'PA1, discloses an exercise machine including a frame, a seat, a pair of pads to engage the upper arms, a pair of movement arm units, and a resistance system. 'PA1 lacks pairs of front and rear uprights rising from respective legs. Habin teaches an analogous device wherein the frame structure includes pairs of front and rear uprights, with each set of front and rear uprights defining a vertical plane, wherein the vertical planes form an angle with respect to one another approximately between 20 and 70 degrees (as best understood by examiner). The feature of having front and rear uprights offset from one another thereby defining vertical planes that intersect each other is old and well known in the art, and the specific angles used are a matter of design choice. Therefore, it would have been obvious to the skilled artisan at the time of invention to further modify the 'PA1 device by providing a frame with offset uprights defining vertical planes as taught by Habin in order to further support the movement arms at their angled formation.

15. Referring to claim 15, 'PA1 as modified by Habin above in claims 13-14 discloses the claimed invention except for the specific angle formed by the axes of

rotation. The specific angle, or range of angles would be a matter of obvious design choice within the knowledge of one with ordinary skill in the art, since the skilled artisan would choose a range of angles depending on the specific areas of the bicep that were to be exercised

16. Referring to claim 16, 'PA1 as modified by Habing above shows that the height of the seat can be adjusted. (Holes on vertical member underneath seat suggest adjustability).

17. Referring to claim 17, 'PA1 as modified by Habing above shows the support pads angled such that a seated user's upper arms would be angled upwardly from the shoulder to the elbow. (See a-22)

18. Referring to claim 18, 'PA1 as modified by Habing above shows the arms angled upwardly from shoulder to elbow at an angle of more than 5 degrees. (See a-22).

19. Referring to claim 19, 'PA1 as modified by Habing above discloses an exercise machine inherently having a backrest (preventing user from falling backwards). The specific angle at which the backrest lies with respect to the underlying surface is unclear from the pictures. However, the specific angle chosen would be a matter of obvious design choice to the skilled artisan at the time of invention, as a variety of angles could be chosen based on user comfort and it is well known and common in the art to have exercise devices with backrests that lie at a 90 degree angle with respect to the underlying surface. (See a-22)

20. Referring to claim 20, 'PA1 as modified by Habing above discloses pads positioned to intersect with a respective axis of rotation.

Art Unit: 3764

21. Referring to claim 21, 'PA1 as modified by Habing above discloses a resistance system comprising a weight stack. (See a-22).

22. Referring to claim 22, 'PA1 as modified by Habing above discloses the movement arm comprising a cam, and wherein the resistance system includes a belt attached to the cam.

23. Referring to claim 23, 'PA1 as modified by Habing above shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit. (See a-22)

24. Referring to claim 24, the 'PA1 device shows an exercise machine comprising a frame, a seat mounted to the frame, a pair of support pads mounted to the frame being positioned to engage one of the upper arms and elbows of a seated user, and being movable between an extended position in which the user's arms are substantially straight, and a curled position in which the user's arms are bent, a first cable connected with the movement arms, a second cable connected with the weight stack, and pulleys. 'PA1 discloses the claimed invention except for the specific range of angles at which the pivot axes meet. Habing teaches an analogous device including a pair of support pads mounted to a frame and movement resistance arm units with the axes of rotation outwardly canted at an angle approximately within the claimed range of the applicant. It would have been obvious to one with ordinary skill in the art at the time of invention to have the movement arm units have axes of rotation that met at an angle as taught by

Art Unit: 3764

Habing in order to allow for isolation of different portions of the bicep muscle during exercise while minimizing awkward movement.

25. Referring to claim 25, 'PA1 as modified by Habin above, shows the seat being configured so that the elevation can be adjusted.

26. Referring to claim 26, the modified 'PA1 device shows the support pads angled such that a seated user's upper arms would be angled upwardly from the shoulder to the elbow.

27. Referring to claim 27, the modified 'PA1 shows the arms angled upwardly from shoulder to elbow at an angle of more than 5 degrees.

28. Referring to claim 28, the modified 'PA1 device discloses an exercise machine inherently having a backrest (preventing user from falling backwards). The specific angle at which the backrest lies with respect to the underlying surface is unclear from the pictures. However, the specific angle chosen would be a matter of obvious design choice to the skilled artisan at the time of invention, as a variety of angles could be chosen based on user comfort and it is well known and common in the art to have exercise devices with backrests that lie at a 90 degree angle with respect to the underlying surface.

29. Referring to claim 29, the modified 'PA1 device shows support pads positioned so that each of the user's elbows is located on a respective axis of rotation.

30. Referring to claim 30, the modified 'PA1 device discloses the claimed invention except for the specific angle formed by the axes of rotation. The specific angle, or range of angles would be a matter of obvious design choice within the knowledge of one

with ordinary skill in the art, since the skilled artisan would choose a range of angles depending on the specific areas of the bicep that were to be exercised.

31. Referring to claim 31, 'PA1 as modified above discloses the claimed invention except for the frame structure. Habing teaches an analogous device wherein the frame structure includes pairs of front and rear uprights, with each set of front and rear uprights defining a vertical plane, wherein the vertical planes form an angle with respect to one another approximately between 20 and 70 degrees (as best understood by examiner). The feature of having front and rear uprights offset from one another thereby defining vertical planes that intersect each other is old and well known in the art, and the specific angles used are a matter of design choice. Therefore, it would have been obvious to the skilled artisan at the time of invention to further modify the 'PA1 device by providing a frame with offset uprights defining vertical planes as taught by Habing in order to further support the movement arms at their angled formation.

32. Referring to claim 32, the modified 'PA1 device shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit.

33. Referring to claim 33, 'PA1 discloses an exercise machine comprising a frame, a seat mounted to the frame, a pair of support pads mounted to the frame being positioned to engage one of the upper arms and elbows of a seated user, and being movable between an extended position in which the user's arms are substantially straight, and a curled position in which the user's arms are bent, a resistance system

Art Unit: 3764

connected with the movement arm units that provides resistance, wherein the elevation of the seat and the support pads are such that when a user is seated and the user's elbows or upper arms engage the support pads, the user's upper arms are angled upwardly from shoulder to elbow at an angle greater than 5 degrees. 'PA1 discloses the claimed invention except for the specific range of angles at which the pivot axes meet. Habing teaches an analogous device including a pair of support pads mounted to a frame and movement resistance arm units with the axes of rotation outwardly canted at an angle approximately within the claimed range of the applicant. It would have been obvious to one with ordinary skill in the art at the time of invention to have the movement arm units have axes of rotation that met at an angle as taught by Habing in order to allow for isolation of different portions of the bicep muscle during exercise while minimizing awkward movement.

34. Referring to claim 34, the modified 'PA1 device discloses an exercise machine inherently having a backrest (preventing user from falling backwards). The specific angle at which the backrest lies with respect to the underlying surface is unclear from the pictures. However, the specific angle chosen would be a matter of obvious design choice to the skilled artisan at the time of invention, as a variety of angles could be chosen based on user comfort and it is well known and common in the art to have exercise devices with backrests that lie at a 90 degree angle with respect to the underlying surface.

35. Referring to claim 35, the modified 'PA1 device shows support pads positioned so that each of the user's elbows are located on a respective axis of rotation.

Art Unit: 3764

36. Referring to claim 36, the modified 'PA1 device discloses resistance system comprising a weight stack.

37. Referring to claim 37, the modified 'PA1 device discloses the movement arm unit comprising a cam wherein the resistance system includes a belt attached to and engaging each cam. (See a-22).

38. Referring to claim 38, the modified 'PA1 device shows the movement arm unit comprising a lever arm that pivots about a respective axis of rotation and a handle that is pivotally interconnected, with the axis of rotation of the handle being substantially parallel to the axis of rotation of the movement arm unit.

Response to Arguments

39. Applicant's arguments with respect to claims 1-33 have been considered but are moot in view of the new ground(s) of rejection. As mentioned above Habing reference teaches pivot axis canted away from one another thereby forming an angle approximately within the range claimed by applicant. Furthermore, limitations concerning positioning of rear and forward uprights are considered old and well known in the art since many prior art devices have rear and forward uprights positioned so that a plane formed by each pair of forward and rear uprights would form an angle with respect to one another.

Conclusion

Art Unit: 3764

40. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sokol U.S. Patent No. 5,964,684

Giannelli et al. U.S. Patent No. 6,056,678

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



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July 9, 2003